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## Attorneys for Debtors

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

Case No.10-11995

Charles Denis Downie and Lydia Downie

## Chapter 13

### Debtors(s)

MOTION FOR ORDER  
DETERMINING VALUE OF SECURED  
CLAIM AND FOR ORDER AVOIDING  
LIEN; DECLARATION OF DEBTOR

Hearing:  
Date: October 18, 2010  
Time: 1:30 PM  
Place: 99 E Street, Santa Rosa, CA

To: DEPARTMENT OF VETERANS AFFAIRS

Charles Denis Downie and Lydia Downie, Debtor(s) herein, hereby move the Court for an order determining the value of the secured claim of American General Financial Services (“First Junior Lienholder”) and for an order avoiding the second priority lien of First Junior Lienholder. Debtor(s) represent:

1. This Chapter 13 case was commenced by voluntary petition on May 26, 2010.
  2. Debtor(s) are the owners of real property located at 10133 Fairway Dr, Kelseyville, CA 95451 (APN: 043-573-22) (hereinafter the “Real Property”).

1           3. On or about 3/01/04, Debtors borrowed a sum of money from Dp Vet Affairs (“Senior  
2 Lienholder”). In exchange, debtors gave the lender a Promissory Note with loan number 934328  
3 and granted it a first priority security interest in the Real Property which was recorded as a first  
4 Deed of Trust. As of filing, the balance owed under the Note to the Senior Lienholder is  
5 approximately \$178,328.46.

6           4. On or about 7/07/06, Debtors borrowed an additional sum of money from American  
7 General Financial Services (“First Junior Lienholder”). In exchange, debtors gave the First  
8 Junior Lienholder a Promissory Note with Loan No. 7062569000667204 and granted it a second  
9 priority security interest in the Real Property which was recorded as a first Deed of Trust which  
10 was recorded as a Deed of Trust in the Lake County Recorder’s Office on 7/12/2006, as  
11 Instrument No. 2006018294. At the time of the filing of the petition, the balance owed under the  
12 note to the First Junior Lienholder is approximately \$44,786.63.

13           5. On or about 11/01/07, Debtors borrowed an additional sum from Dp Vet Affairs  
14 (“Second Junior Lienholder”). In exchange, debtor(s) gave Second Junior Lienholder a  
15 Promissory Note with Loan No. 970512. At the time of the filing of the petition the amount  
16 owed on this debt was \$70,740.65.

17           6. Debtors are informed and believe, based upon sales and comparable properties in the  
18 same area, that the current value of the Real Property is \$200,000 or less.

19           8. The third priority claim of Second Junior Lienholder is wholly unsecured pursuant to  
20 Section 506(a) because the value of the Real Property is less than the balance owed under the  
21 first priority and second priority Notes and Deeds of Trust. 11 U.S.C. § 506(a). As such, the  
22 second priority lien of First Junior Lienholder is subject to avoidance upon Debtor(s)’ successful  
23 completion of their Chapter 13 Plan. 11 U.S.C. § 1322(b)(2).

1           9. The third priority claim of Second Junior Lienholder is wholly unsecured pursuant to  
2 Section 506(a) because the value of the Real Property is less than the balance owed under the  
3 first priority Note and Deed of Trust. 11 U.S.C. § 506(a). As such, the third priority lien of  
4 Second Junior Lienholder is subject to avoidance upon Debtor(s)' successful completion of their  
5 Chapter 13 Plan. 11 U.S.C. § 1322(b)(2).

6           WHEREFORE, Debtors request that the Court enter an order disallowing the secured  
7 claim of Department of Veteran's Affairs§, and for an order avoiding the lien of Department of  
8 Veteran's Affairs upon completion of the debtors Chapter 13 Plan and bankruptcy discharge.

9  
10 Date: September 17, 2010

BECK LAW P.C.

11           \_\_\_\_\_  
12           /s/ Dan B. Beck  
by: Dan B Beck  
13           Attorneys for Debtor(s)

1                   DECLARATION OF CHARLES DOWNIE

2       I, CHARLES DOWNIE am the debtor described in the above motion. Based on my  
3 personal knowledge and my examination of the documents described above I declare under  
4 penalty of perjury that the facts described in the above motion are true and correct to the best of  
5 my knowledge information and belief.

6 Date: September 17, 2010

7                   /s/ Charles Downie  
8                   Charles Downie

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